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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,626	03/19/2004	Raymond E. Cellemme	1970/50	7850

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EXAMINER
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PRICE, CRAIG JAMES

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/804,626	Applicant(s) CELLEME ET AL.	
	Examiner Craig Price	Art Unit 3753	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 17 March 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicant's election without traverse of Group I drawn to claims 1-15 in the reply filed on 17 March 2006 is acknowledged.

Claims 16 and 17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 17 March 2006.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1,2 and 4-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller et al.(US 1,006,260) in view of Holzer (US 4,474,379).

Regarding claims 1,2 and 4-15, Mueller et al. disclose a pipe fitting, comprising, a housing (1) configured to be used as a backflow prevention apparatus, having an access port (8) for removal and reinstallation of an internal mechanism without the removal of the valve housing from a piping system, an arcuate cover (2) for closing the access port, the cover has at least one cover flange (9c) for clamping to a mating valve

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housing flange disposed on the valve housing, a fastener (12) for clamping the cover to the valve housing, the fastener comprises at least one bolt extending through a hole in the cover flange and a corresponding hole in the valve housing flange, wherein the cover is shaped to provide a substantially uniform clamping force to the gasket, wherein the cover has a height measured from the cover flange to a top centerline of the cover, the first width being greater than twice the height, as seen in Figure 2. The steps of claim 15 including "providing a valve housing having an access port for removal and reinstallation of an internal mechanism" and "fastening the cover flange to the mating valve housing flange using the fastener" are disclosed in (Col. 1 Lns. 25-28 and Col 2, Lns. 84-88).

Mueller at al. lacks an endless resilient gasket for providing a seal between the cover and the valve housing, comprising a gasket web, the gasket being positioned on a peripheral edge of the access port, with the gasket web positioned adjacent to the peripheral edge in sealing contact with the cover and the valve housing and the gasket web having a pair of legs, wherein the gasket web connects the legs to form a generally U-shaped cross-section and the legs positioned on opposite sides of the peripheral edge in sealing contact with the cover and the valve housing, and the gasket has an elastomer hardness of about 80 durometer on a Shore A scale. Holzer discloses a cover having a gasket (2), having a pair of legs, wherein the gasket web connects the legs to form a generally U-shaped cross-section and the legs positioned on opposite sides of the peripheral edge in sealing contact with the cover (1), and the gasket has an elastomer hardness of about 80 durometer on a Shore A scale (Col.3, Lns. 9,10).

In view of the patent of Holzer, it would have been obvious to one of ordinary skill in the art at the time of invention, to employ Holzer's gasket onto the device of Mueller et al. to have of an endless resilient gasket for providing a seal between the cover and the valve housing, comprising a gasket web, the gasket being positioned on a peripheral edge of the access port, with the gasket web positioned adjacent to the peripheral edge in sealing contact with the cover and the valve housing and the gasket web having a pair of legs, wherein the gasket web connects the legs to form a generally U-shaped cross-section and the legs positioned on opposite sides of the peripheral edge in sealing contact with the cover and the valve housing, and the gasket has an elastomer hardness of about 80 durometer on a Shore A scale, in order to maintain fluid in the sealed space (Col. 2, Lns. 8-13).

Regarding method claim 14, the device shown by Mueller et al. in combination with Holzer will perform the methods as recited in claim 5, during normal operational use of the device, the method of making or using the device is inherent in using the apparatus.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mueller et al. '260 and Holzer '379 and further in view of Liljegren (US 1,672,572).

Mueller et al. and Holzer have taught all of the features of the claimed invention, but lacks the cover and valve housing are connected by at least one hinge for permitting the cover to move away from and into contact with the resilient gasket. Liljegren discloses the use of a cover (17) and valve housing (10,14) are connected by at least one hinge (18) and in (Col. 1, Lns. 41-53).

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In view of the patent of Liljegren, it would have been obvious to one of ordinary skill in the art at the time of invention, to replace the cover of Mueller et al. and Holzer, with the cover and hinge of Liljegren, to have a cover and valve housing are connected by at least one hinge for permitting the cover to move away from and into contact with the resilient gasket, in order to provide a means by which the cover does not become displaced during installation/maintenance of the check valves within the valve housing.

5. Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable Mueller et al. '260 and Holzer '379 and further in view of Morvant (US 5,615,896).

Mueller et al. and Holzer have taught all the features of the claimed invention, wherein the gasket has a hardness of about 80 durometer, although lacks that the gasket has an elastomer hardness of about 70 durometer to about 90 durometer on a Shore A scale. Morvant discloses the use of a seal, where the material "has a 50 to 95 durometer reading on the Shore A durometer scale" (Col. 3, Lns. 43-46).

In view of the patent of Morvant, it would have been obvious to one of ordinary skill in the art at the time of invention, to modify the gasket of Mueller et al and Holzer, with the gasket material of Morvant, to have an elastomer hardness of about 70 durometer to about 90 durometer, in order to provide a gasket having a material with a higher durometer which would resist extruding under high pressure.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments, see page 12, filed 17 March 2006, with respect to the first width have been fully considered and are persuasive. The 112 rejection of claim 8 (d) has been withdrawn.

### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Craig Price whose telephone number is (571) 272-2712. The examiner can normally be reached on 7AM - 5:30PM M-R.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Keasel can be reached on (571) 272-4929. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CP



May 30, 2006



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